

Document

Re-examining the UN Convention on the Elimination of All Forms of Discrimination Against Women: The UN Decade for Women Conference in Nairobi

Introduction

The third and final governmental conference of the United Nations Decade for Women (Decade) convened in Nairobi, Kenya, from July 15-26, 1985. In following the World Plan of Action for the Implementation of the Objectives of the International Women's Year¹ and the Programme of Action for the Second Half of the United Nations Decade for Women,² the Nairobi delegations produced the Nairobi Forward-Looking Strategies for the Advancement of Women During the Period from 1986 to the Year 2000 (Strategies).³ The Decade's objectives of equality, development, and peace, along with the sub-themes of employment, health, and education were the focus of a broad-ranging evaluation of the status of women in the world. The intensified efforts during the Decade on behalf of women arose from the general

awareness that women's reproductive and productive roles were closely linked to the political, economic, social, cultural, legal, educational and religious conditions that constrained the advancement of women and that factors intensifying the economic exploitation, marginalization and oppression of women stemmed from the chronic inequalities, injustices and exploitative conditions at the family, community, national, subregional, regional and international levels.⁴

1. Report of the World Conference of the International Women's Year, U.N. Doc. E/CONF.66/34 (1975). The meeting took place in Mexico City as part of the UN International Year of Women.

2. Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace, U.N. Doc. A/CONF.94/35 (1980). Held in Copenhagen, the meeting came at the midpoint of the UN Decade for Women.

3. Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, U.N. Doc. A/CONF.116/28 (1985). The Nairobi World Conference document was adopted by consensus without a vote.

4. The Nairobi Forward-Looking Strategies for the Advancement of Women, Report of the World Conference to Review and Appraise the Achievements of the United Nations Dec-

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Prior to the Decade, other international efforts to improve conditions for women came largely from the UN Commission on the Status of Women.⁵ Created in the UN's early years, this Commission was almost subsumed into the UN Human Rights Commission, but was left independent because the overloaded docket of human rights issues threatened to divert attention from women's needs. As a culmination of long years of effort,⁶ the Commission on the Status of Women succeeded in producing the Convention on the Elimination of All Forms of Discrimination Against Women (Convention),⁷ which the General Assembly adopted in 1979. The Convention entered into force with twenty ratifying states in 1981. As of September, 1985, it had received ninety-three signatures and eighty ratifications and accessions.⁸

The Convention remains the basic legal instrument for the international promotion and enforcement of women's rights. Building on prior declarations, covenants, and conventions,⁹ it sets out in legally binding form internationally accepted principles and measures to achieve equal rights for women everywhere. Specifically addressing a variety of issues,

ade for Women: Equality, Development and Peace, Chapter I(A), para. 1, U.N. Doc. A/CONF. 116/28 (1985).

5. The Commission's charge was both to initiate and monitor international action on behalf of women. Assuming the role of initiator, the Commission drafted the Convention on Political Rights of Women, *opened for signature* Mar. 21, 1953, 27 U.S.T. 1909, T.I.A.S. No. 8289, 193 U.N.T.S. 135, adopted by the General Assembly in 1952. G.A. Res. 640, 7 U.N. GAOR Supp. (No. 20) at 27, U.N. Doc. A/2361 (1952). Aimed at insuring equality of political participation through reciprocal monitoring of signatory states, the Convention entered into force in 1954.

6. Some instruments from the Commission on the Status of Women setting the stage for the Convention on the Elimination of All Forms of Discrimination Against Women include the Convention on Political Rights of Women, *supra* note 5, Convention on Equal Pay for Work of Equal Value for Men and Women, *opened for signature* June 29, 1951, 165 U.N.T.S. 303, the Convention on Consent to Marriage, of Minimum Age for Marriage and Registration of Marriages, *opened for signature* Dec. 10, 1962, 521 U.N.T.S. 231, the Convention on the Nationality of Married Women, *opened for signature* Feb. 20, 1957, 309 U.N.T.S. 65, and the Convention on the Recovery Abroad of Maintenance, *opened for signature* June 20, 1956, 268 U.N.T.S. 3.

7. *Opened for signature* Dec. 18, 1979, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/36 (1979) [hereinafter cited as Convention]. The Convention is printed below in full annotated text. The characterizing quote of the Convention is: "the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields." *Id.* at 194.

8. Branch for the Advancement of Women, Centre for Social Development and Humanitarian Affairs, United Nations, Decade Note No. 2/Rev. 2, (1985). President Carter signed the Convention on July 17, 1980, as did the majority of signatories in conjunction with the Copenhagen conference. While the Convention was sent to the Senate shortly thereafter, it remains unratified by the U.S.

9. See *supra* note 6. See also U.N. CHARTER, art. 1, para. 3; Universal Declaration of Human Rights, art. 2, para.1, art. 7, art. 16, para. 1, G.A. Res. 217, U.N. Doc. A/810, at 71 (1948); International Covenant on Civil and Political Rights, art. 2, para. 1, art. 26, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social, and Cultural Rights, art. 2, para. 2, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3.

the incorporated supervisory machinery currently in effect requires states to report their progress towards ending discrimination against women at least once in four years. The Commission presents an annual summary to the General Assembly.

As two significant documents designed to elevate the global status of women, the Convention and the Strategies can be examined in order to survey the evolution in thinking about the status of women. Although the Strategies is more recent, the Convention, as a legally binding document, is more substantive. The Nairobi conference may thus be evaluated insofar as it tracks, lingers behind, or goes beyond the provisions contained in the Convention. While some may argue pessimistically that the Nairobi conference was little more than a politicized gathering of states ostensibly interested in women's issues, the Strategies is at least an indicator of the attitudes towards women's rights which states wish to communicate publicly.¹⁰ More optimistically, the Strategies has also been considered a statement of affirmative intent to remedy inequalities between men and women.

The following annotated version of the Convention analyzes the link between the Convention and the Strategies. The documents have much in common. Not only are language and vocabulary similar, but as there has been relatively little change in the world context over recent years, the scope of problems remains the same. However, as a supplement to the Convention, the Strategies is a more detailed document, in which states have set out their positions more explicitly. In addition, the Strategies invited greater participation and received wider publicity, creating different kinds of public pressures for subscribing states. Finally, where the Convention prescribes, the Strategies tends rather to evaluate and make recommendations.

10. See M. McDUGAL & W. REISMAN, *INTERNATIONAL LAW IN CONTEMPORARY PERSPECTIVE: THE PUBLIC ORDER OF THE WORLD COMMUNITY* 1101 (1981) (mass communication as method of shaping national identity and influencing popular perspectives).

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Convention on the Elimination of All Forms of Discrimination Against Women

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants [sic] on Human Rights have the obligation to ensure the equal right of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of *apartheid*, of all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, and in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will

promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹

1. The Convention does not explicitly distinguish between de jure and de facto discrimination, whereas the distinction is clearly brought out in the Strategies. Experience had shown the Nairobi delegates that legislative measures for equality would remain meaningless unless implemented—hence their effort to expand the definition of discrimination to include de facto inequalities explicitly. "The sharp contrasts between legislative changes and effective implementation of these changes are a major obstacle to the full participation of women in society. De facto and indirect discrimination, particularly by reference to marital or family status, often persists despite legislative action." The Nairobi Forward-Looking Strategies for the Advancement of Women, Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, para. 48, U.N. Doc. A/CONF.116/28 (1985) [hereinafter cited as Strategies]. See also *id.* para. 43. The U.S. took exception to one of the sections of the Strategies which traced the roots of inequalities to de facto discrimination. However, other causal categories—"imperialism, colonialism, neo-colonialism, *apartheid*, racism, racial dis-

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Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;²

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;³

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;⁴

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

crimination and . . . unjust international economic relations”—could also explain the U.S. position. *Id.* para. 44.

2. The Convention mandate to alter national constitutions and legislation is weaker in the Strategies. While governments are “urged” in the Strategies to ratify the Convention, they are only asked to “consider the possibility of establishing appropriate bodies charged with reviewing the national legislation concerned and with drawing up recommendations thereon” *Id.* para. 60. In explanatory comments for the Strategies, Malaysia found it necessary to reserve formally its ability to incorporate references to the Convention. The Convention would require constitutional changes that Malaysia was unwilling to make. Apparently, Malaysia believed no other references in the Strategies threatened their constitution as directly as the Convention itself. Resolutions and Decisions, Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade For Women: Equality, Development and Peace, para. 237, U.N. Doc. A/CONF.116/28 (1985) [hereinafter cited as Resolutions].

3. Sanctions are specifically endorsed both in the Convention, *see* Convention, art. 11(2)(a), and in the Strategies, with regard to dismissals from employment on the grounds of pregnancy, maternity leave or marital status. However, the Strategies makes a stronger statement by claiming that, as women have the same right to work as men, they also have the right to return to work after maternity leave ends. Strategies, *supra* note 1, para. 71.

4. The Strategies calls for monitoring that is both unobstructed and costless to the rural and urban women seeking redress for discrimination. *Id.* para. 61. Other protective measures include in-depth research on existing discrimination and especially on double standards, *id.* para. 65, law reform committees with equal male and female representation, *id.* para. 66, programs educating women workers about their rights, *id.* para. 72, and in-service judiciary training on women’s rights accepted in internationally agreed instruments, *id.* para. 75.

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;⁵

(g) To repeal all national penal provisions which constitute discrimination against women.⁶

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.⁷

Article 4

5. The Strategies sets out a considerable number of specific "appropriate measures" to combat the four areas of discrimination addressed in this general statement. The subheadings in the section on equality indicate the range: "constitutional and legal," "equality in social participation," and "equality in political participation and decision-making." *Id.* sec. I(C).

6. Specific penal provisions in this context are given a separate heading in the Strategies under the section on Areas of special concern. *Id.* sec. IV(K). While the major concern is equal treatment for men and women under criminal law, the Strategies also expresses concern about the increasing incarceration of women and the larger proportions of indigenous women imprisoned in some countries. *Id.* para. 297. Criminal law is also directly addressed in the Strategies with regard to women as victims of sex-related crimes. The delegations referred to such crimes as particularly degrading to women. There was concern about a tendency to enforce laws with insufficient sensitivity toward women. *Id.* para. 76. Coupled with the general discussion on the need for power-sharing and the lack of women in official positions, this implicitly reflects a concern with the chronic inequality inherent in a penal system largely run by men.

7. Article 3 provides a summation of the objectives of both the Convention and the Strategies. In both documents, the assessment is general and cuts across disciplines. Such a wide-ranging approach is a natural outgrowth of the increasing understanding of the interdependence of circumstances affecting women's rights. Indeed, although the U.S. delegation, in its statement of explanation for the Strategies, reiterated that it "had long been concerned and sought to minimize the insertion of general political issues with only a nominal connection with the unique concerns of women," Resolutions, *supra* note 2, para. 246, most Nairobi delegates concluded that women's issues are intertwined with all political issues, and that the lack of peace in the world necessarily impinges on women's rights. The choice of peace to accompany equality and development as themes of the Nairobi Conference generated a sense of urgency about incorporating the political dimensions of women's rights into the Strategies.

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1. Adoption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.⁸

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.⁹

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;¹⁰

(b) To ensure that family education includes a proper understanding of ma-

8. By not considering special remedial measures to be discriminatory, the Convention takes the position that affirmative action is acceptable, and even desirable, as long as inequalities continue to exist. As agreed in the Strategies, advantages can legitimately be given to women to the extent that historical inequities require. Although the Convention language is essentially followed in the Strategies, it is less prominently placed, buried in a paragraph on employment. Strategies, *supra* note 1, para. 84. The specific reference to *de facto* equality, its only mention in the Convention, underscores the recognition that the appropriateness of affirmative action should be measured with regard to the actual practice of discrimination. In subtly allowing for affirmative action through "special measures" despite *de jure* legislative equality, the Convention foreshadows concern about unimplemented legislation conferring only nominal rights on women—a concern more fully expressed in the Strategies. See *supra* note 1.

9. Because of the biological differences between men and women, the Convention endorses special, albeit temporary, measures for maternity, in contrast to the conditional endorsement of measures to reduce traditional inequalities. The Strategies extends the protection of maternity afforded by the Convention in coupling approval of special measures with the imposition of sanctions against discrimination related to maternity. *Id.* para. 71. See Convention, art. 11(2)(a).

10. In broadening the discussion of the obstacles to equality, the Strategies blames "deeply rooted resistance on the part of conservative elements in society" See generally *id.* para. 50. To modify attitudes, the Strategies develops the "appropriate measures" called for in the Convention, and gives particular emphasis to increased education in many forums and on many topics. *Id.* para. 56. See generally *id.* paras. 163-173. Collection and publication of statistics, *id.* para. 58, the restructuring of employment, health and education systems, as well as the removal of legal, customary, and other barriers, *id.* para. 115, are other measures specifically proposed for the reduction of gender biases.

ternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.¹¹

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.¹²

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

11. The distinction made by separating the sections of this article is echoed in the Strategies: "The continuation of women's stereotyped reproductive and productive roles . . . has subordinated them in the general as well as sectoral spheres of development" *Id.* para. 93. The Strategies further explicates the Convention's call for a proper understanding of maternity by claiming that "there is no physiological basis for regarding the household and family as essentially the domain of women." *Id.* para. 45. Emphasizing the sharing of domestic responsibilities, *id.* para. 59, the Strategies calls for family education to be directed at both men and women, *id.* para. 157, and for efforts to create social infrastructures that would accommodate sharing of parental duties. *Id.* para. 121. The assumption behind these measures is that sharing will alleviate the secondary status of women both by providing fuller recognition of their labor and by freeing women to be more productive members of society. *See generally id.* para. 59.

12. Under "Areas of special concern" in the Strategies is the section entitled "Women Victims of Trafficking and Involuntary Prostitution." *Id.* paras. 290, 291. Likened to slavery and criticized as stemming from women's dependence on men, the problems of "sex tourism, forced prostitution and pornography," *id.* para. 290, create "complex and serious problems . . . [which] call for increased and co-ordinated efforts by police agencies internationally." *Id.* para. 291. The Strategies also expresses concern about the abuse of women as sexual objects with respect to employment-related sexual harassment and sexual exploitation, *id.* para. 139, pornography and the portrayal of women as sex objects, *id.* para. 85, and especially the commonplace nature of violence against women. *Id.* para. 258. Despite these references, the Holy See was sufficiently dissatisfied by the discussion to include in its explanatory comments "opposition to showing and using women as 'sex objects,' even if such opposition during the deliberations was not logically developed into a criticism of sexual permissiveness and irresponsibility." Resolutions, *supra* note 2, para. 238(d).

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(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.¹³

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.¹⁴

Article 9

1. States Parties shall great [sic] women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.¹⁵

13. Recognizing the fundamental importance of power-sharing both as a way to achieve greater equality and as an expression of equality, the Strategies elaborates on the Convention's provisions for increased participation of women in the public sector. Strategies, *supra* note 1, para. 51. The Strategies assumes the right to vote for women and encourages women to exercise this right. *Id.* para. 90. There are also broader suggestions for political involvement of women at all levels of government, especially in official and representative capacities. *See generally id.* paras. 86-92. As exemplified by the section entitled "Equality in political participation and decision-making," the Strategies defines participation to require active involvement of women in the form of meaningful, rather than only nominal, positions of leadership. *See also id.* para. 111.

14. The Strategies includes this mandate from the Convention. *Id.* para. 79. The importance in the Strategies of the international involvement of women is especially emphasized in section III, "Peace": "[U]niversal and durable peace cannot be attained without the full and equal participation of women in international relations" *Id.* para. 235. Section V of the Strategies is devoted solely to international and regional cooperation. *Id.* paras. 305-372. The international setting is particularly important for developing countries, which otherwise have little opportunity for the articulation of concerns.

15. Although a separate article of the Convention is devoted to equitable nationality rights for women, no explicit mention of nationality was included in the Strategies. A possible explanation of the failure to address nationality may be that sufficient rights have been accorded to women through the U.N. Convention on the Nationality of Married Women, *opened for signature* Feb. 20, 1957, 309 U.N.T.S. 65, making nationality rights a non-issue. Instead, the Strategies

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education¹⁶ and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

offers certain other rights by which women should gain equal status and be recognized as independent parties, regardless of marital status. *See* Convention arts. 13, 15, 16 and *infra* notes 23-25 and 30-34.

16. The discussion of education in the Convention emphasizes the promotion of equal opportunities and access to education for men and women. Both documents assume that increased knowledge and skills will enable women to find improved work opportunities. *See* *Strategies*, *supra* note 1, para. 116. In both documents, education is also the cornerstone for the realization of women's rights, since "the law as a recourse does not automatically benefit all women equally, owing to the socio-economic inequalities determining women's knowledge of and access to the law . . ." *Id.* para. 48. However, unlike the Convention, the *Strategies* implicitly recognizes the additional and often prohibitive factor of general societal attitudes which may discourage women from availing themselves of educational opportunities and which discourage men from recognizing women as potential actors outside of the home. Consequently, the *Strategies* places a greater emphasis than does the Convention on the need to change the nature of education and research in order to change attitudes about women's rights and roles in society. *Id.* at paras. 80-83. The specifics listed in the Convention article on education are all covered in the *Strategies*, except equal access to sports. *See generally* the subsection "Education under measures for implementing development strategies," *id.* paras. 163-173.

The effect of the mass media has become increasingly understood as a powerful influence on shaping societal attitudes. While the *Strategies* takes into account this power of the media and affords it a special place, acknowledgment of the media's role does not appear at all in the Convention. *Id.* paras. 85, 228.

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(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.¹⁷

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:¹⁸

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;¹⁹

17. Like the Convention, the Strategies calls specific attention to education about family planning. Information is understood to be critical "to ensure a voluntary and free choice," and such information is considered relevant to both men and women, *id.* para. 157, including the young. *Id.* para. 158. See *infra* note 22 for a broader discussion of women's reproductive rights.

18. The Convention discusses employment in terms of rights. By contrast, the Strategies does not consider employment in such absolute terms, thus considerably weakening the thrust of the Convention. The Strategies simply espouses measures designed to improve the position of women in the labor market. Notwithstanding the call in the Strategies for ratification of the Convention for the sake of employment improvements, *id.* para. 134, the specific language of the Strategies limits the objective to equality rather than absolute rights. See generally *id.* paras. 132-147. The net result is that while some of the Convention concerns are covered in the Strategies, such unqualified proposals as the right to work are not covered.

19. The ambiguous phrasing of this clause avoids the conflict which arose in the discussions at the Nairobi conference regarding the value of equal pay,

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:²⁰

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.²¹

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Par-

whether for work of equal value, as almost unanimously accepted in the Strategies, or for equal work. *Id.* para. 69, and Resolutions, *supra* note 2, para. 245. *See also* Strategies, *supra* note 1, para. 137. These distinctions are relevant to the debate, particularly current in the United States, about the validity of comparable worth.

20. All suggestions in the Convention regarding maternity and employment are preserved within the Strategies. *See, e.g., id.* paras. 140, 155, 162. A notable addition in the Strategies is the extension of maternity leave to parental leave "available to both men and women and preferably shared between them." *Id.* para. 140. *See* discussion of article 12 *infra* note 22.

21. The Convention indicates an awareness that technologies are changing. Consequently, the set of measures to improve women's rights should be under continual review and should be adapted to fit such changes. The Strategies incorporates this flexibility, as does the Convention, although the Strategies includes a further recommendation to involve women in developing technology. *Id.* paras. 200-205.

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ties shall ensure to women appropriate services in connexion with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.²²

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;²³
- (b) The right to bank loans, mortgages and other forms of financial credit;²⁴
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.²⁵

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families,²⁶ including their work in the non-monetized sectors of

22. In part, the two sections of this article seek to preserve all reproductive rights for women, so that the choice not to procreate does not come at the cost of the choice to procreate. The Strategies follows suit in promoting adequate health care and counselling independently of specific reproductive choices.

Detailed standards in the Strategies for comprehensive health care include wide dissemination of high quality vaccines, *id.* para. 152, access to appropriate and safe drugs, *id.* para. 153, and self-control of income to allow for provision of adequate nutrition, *id.* para. 154, generally along the lines of “promotive, preventive and curative health measures . . . free of commercial pressure.” *Id.* para. 151. Stating that “the ability of women to control their own fertility forms an important basis for the enjoyment of other rights,” the Strategies focuses on the availability of family planning services regardless of governmental population policies. *Id.* at para. 156. Concern about physical and psychological harm from adolescent pregnancies translates into calls for family planning policies to avoid early childbearing. *Id.* para. 158. *See generally* development section on health care, *id.* paras. 148-162.

23. *See infra* note 34 and accompanying text.

24. *See infra* notes 26-29 and accompanying text.

25. *See supra* note 16 regarding recreational activities. The aspects of cultural life highlighted in the Strategies emphasize preservation over participation. Inclusion of traditional medicine under health, *id.* para. 160, traditional craft and cottage industries under industry, *id.* para. 195, and cultural media such as ritual, drama and oral literature under communications, *id.* para. 206, is indicative of an appreciation in the Strategies of certain cultural forms. The Strategies also promotes “women’s own cultural projects aimed at changing the traditional images of women and men.” *Id.* para. 206.

26. Throughout the Strategies, special recognition is made of rural life, although with the understanding that women’s rights belong to both rural and

the economy,²⁷ and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:²⁸

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, *inter alia*, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;

urban women. Special references to the suffering of rural women are developed in section IV of the Strategies, entitled "Areas of special concern," under categories such as "women in areas affected by drought," *id.* sec. IV(A), "women deprived of their traditional means of livelihood," *id.* sec. IV(H), and "migrant women," *id.* sec. IV(M). Generally, the policies designed to help women should be geared "to the specific problems of women in different regions and countries and the needs of different categories of women in them." *Id.* para. 107. The Strategies criticizes the view that economic growth will automatically lead to improved conditions within countries: "While during the earlier part of the Decade the belief that economic growth would automatically benefit women was more widely shared, an evaluation of the experience of the Decade has shed considerable doubt on this over-simplified premise." *Id.* para. 103.

27. The Strategies' analogue to this article, "The equal recognition of women's informal and invisible economic contributions in the mainstream of society," expresses continuing concern with non-recognition of women's work. *Id.* para. 59. This fundamental reflection of inequality should be alleviated by the inclusion of domestic work, now unpaid and undervalued, in the national accounts, economic statistics, and gross national product. *Id.* para. 120. At a minimum, this should help reveal the "'double burden' of working women in both urban and rural areas" created by their dual domestic and public working roles. *Id.* para. 228.

28. All but one of the Convention provisions listed below are covered at least once in the Strategies: (a) *see, e.g., id.* paras. 179, 183, 187; (b) *see supra* note 22; (c) *id.* paras. 54, 194; (d) *id.* paras. 164, 176; (e) *id.* paras. 185, 195; (f) *id.* paras. 111, 113, 117; (g) *id.* paras. 115, 182. While the indicated paragraphs do not always refer specifically to rural women, in the context of the document's general concern for the economically disadvantaged, these references in the Strategies clearly apply to rural women.

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- (f) To participate in all community activities;
- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.²⁹

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.³⁰
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.³¹
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.³²
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their

29. The Strategies makes a weaker statement than article 14 because it does not explicitly demand adequate housing, *id.* paras. 209-212, sanitation, *id.* para. 225, water supply, *id.* paras. 210, 225, transport, *id.* paras. 214-217, or communications, *id.* para. 208. While the Strategies does call for greater access by women to financial credit, *id.* para. 211-214, and for involvement of women in the formulation of policies and projects to provide basic shelter and infrastructure, *id.* para. 209, the general degree of commitment in the Strategies is to equal conditions and no more. If conditions are inadequate for men, the Strategies does not expressly create an obligation of adequacy for women as the Convention does. *Cf. supra* note 18.

30. *See supra* notes 2-4. The intent of the provisions in the Strategies is to create legal equality between men and women.

31. The Strategies potentially goes beyond the Convention in requiring a "positive action policy" which would direct efforts specifically to assist women. *Id.* para. 61. *See supra* note 4. The magnitude of inequality appears to justify the special emphasis, since the various paragraphs addressing legal deficiencies represent numerous areas requiring change: discriminatory customary law, discriminatory statutory law, insensitive law reform officers, ignorance of legal rights, and costly or cumbersome legal procedures. *See supra* note 5.

32. This condition does not appear in the Strategies. A possible explanation for this omission is an unwillingness by the delegates to be perceived as overruling affirmative legislation, particularly as they were not acting in any official legislative capacity. Its absence both de-emphasizes a significant obligation and disadvantages women when compared to the progress towards ending discrimination made in the Convention.

residence and domicile.³³

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:³⁴

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation

33. Freedom of movement and freedom to choose residence and domicile appear only in the Convention. The only freedoms named in the Strategies are the freedom of association and the right to organize as they relate to employment. *Id.* para. 72.

34. Equality regardless of marital status as set out by the Convention is fully incorporated into the Strategies. Choice regarding marriage, respect for parent-child relationships even for single or divorced parents, reproductive rights, and property rights receive both general and specific attention in the Strategies. *See id.* paras. 68, 73, 74, 156. The only difference between the two instruments is that the Strategies argues weakly for raising the minimum age for marriage, while the Convention requires nullification of child marriages. *Id.* para. 158.

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of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

- (a) Within one year after the entry into force for the State concerned; and
- (b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

- 1. The Committee shall adopt its own rules of procedure.
- 2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in this Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

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- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

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Conclusion

Although the *Strategies* is a significant exposition of women's rights, the Convention carries the burden of exacting compliance from ratifying countries. The *Strategies* has neither the force of law nor the supervisory mechanism that provides the basis of enforcement for the Convention. Ironically, the more forward-looking document of the two is of far less value for the future, since, as a political piece, the *Strategies* derives most of its force from its current publicity as it favors or embarrasses states. Notwithstanding its political elements, the public attention given the Nairobi conference may have a more lasting effect in building awareness of women's needs, generating discussion about their issues, and altering entrenched attitudes about women's roles. As a landmark document in the struggle for women's rights, the *Strategies* may become the catalytic center for wider circles of influence.

The Convention, designed to provide a legal framework to enable women to participate fully within society, enunciates rights relating to equality and development, two themes of the Decade. The third theme of the UN Decade, peace, becomes especially relevant when the legal rights are understood to include political rights. The Nairobi conference gave women an opportunity to argue for the relevance of peace to women's rights as part of the interrelationship between equality, development, and peace.

By giving women and women's issues a political voice, the *Strategies* accorded greater credibility to women's concerns. A substantial proportion of the Convention's provisions were endorsed by countries of the world through their acceptance of the *Strategies* document. Sincere consensus regarding the *Strategies* should bring more countries, including the United States, closer to enacting the provisions of the Convention.

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